

Kansas Corporation Commission
/s/ Jeffery S. Wasaman

**THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS**

Before Commissioners: John Wine, Chair
Cynthia L. Claus
Brian J. Moline

In the Matter of the Application of Aquila, Inc.,)
d/b/a Aquila Networks-KGO, f/k/a UtiliCorp)
United Inc., d/b/a Peoples Natural Gas Company) Docket No. 02-AQLG-810-MIS
(KGO), Filing a Request to Modify the Requirements)
of 49 C.F.R. Part 192.285(c) as Adopted by K.A.R.)
82-11-4 Last Amended February 25, 1999.)

ORDER

NOW, the above-captioned matter comes before the State Corporation Commission of the State of Kansas ("Commission"). Having examined its files and records, and being duly advised in the premises, the Commission finds and concludes as follows:

I. BACKGROUND

1. On March 11, 2002, Aquila, Inc., d/b/a Aquila Networks-KGO, f/k/a UtiliCorp United Inc., d/b/a Peoples Natural Gas Company (KGO) ("Aquila" or "Applicant"), filed an informal application for waiver of the requirements of 49 C.F.R. §192.285(a)(2) and §192.285(c), as adopted by K.A.R. 82-11-4, and requesting modification of the criteria utilized for re-qualification of their employees who engage in the joining of plastic pipe, as well as the frequency of re-qualification.

2. Aquila states that under the strict 12-month "clock" presently imposed by the criteria of 49 C.F.R. §192.285(c), large natural gas utility operators with numerous personnel qualified to make plastic joints are faced with the practical difficulties associated with tracking the joints made by each person on an individual basis as prescribed by the regulation. Consequently, Aquila, like many large operators, has opted to simply re-qualify their personnel

within the 12-month requirement. In order to comply with the current 12-month re-qualification language of the regulation, Aquila indicates that companies have found it necessary to establish training schedules on an 11-month basis in order to allow for scheduling conflicts. For efficiency reasons, operators generally attempt to schedule the re-qualification of personnel during periods of inclement weather in order to maximize total construction days. Aquila further states that the ability to efficiently schedule large numbers of employees to take advantage of these weather-related lulls in construction activity has been severely hampered by having to re-qualify every employee on an 11-month basis. Aquila indicates that it always strives to achieve the 12-month re-qualification, however, the company feels that a more reasonable approach could be implemented. In order to accommodate a degree of flexibility in scheduling, the company proposes that a person be re-qualified at least once each calendar year, but at intervals not exceeding fifteen (15) months, a practice that is permitted elsewhere in the pipeline safety regulations. Aquila maintains that their proposed approach will not jeopardize safety as the employees will still be required to re-qualify on an annual (calendar year) basis, but it will permit a measure of flexibility so that the scheduling of re-qualifications can occur when weather or other conditions do not permit normal work activities.

3. In addition to the requested waiver discussed in paragraph 2 above, Aquila also proposes an alternative with respect to the process for re-qualification of persons making mechanical and/or electrofusion joints. The company believes that each person, during his or her initial qualification regarding a plastic joint, should make a complete assembly of each type of mechanical and electrofusion joint. However, during subsequent annual re-qualification the company proposes that the person participate in a joining process review for each assembly procedure covering the knowledge needed for each specimen joint assembly and procedure, and demonstrate all steps leading up to the actual

production of a joint, but that the joint not be completed. Aquila maintains that the granting of its requested waiver and permitting implementation of the requested alternative means of re-qualification will not compromise safety. Additionally, the company believes the change will result in efficiency and cost benefits by saving training time and minimizing the number of non-reusable plastic mechanical joints that are destroyed in the training process.

4. 49 C.F.R. §192.285(a)(2) and §192.285(c), as adopted by K.A.R. 82-11-4, presently read as follows:

(a) No person may make a plastic pipe joint unless that person has been qualified under the applicable joining procedure by:

(1) Appropriate training or experience in the use of the procedure; and

(2) Making a specimen joint from pipe sections joined according to the procedure that passes the inspection and test set forth in paragraph (b) of this section, (emphasis added)

(c) A person must be requalified under an applicable procedure, if during any 12-month period that person:

(1) Does not make any joints under that procedure; or

(2) Has 3 joints or 3 percent of the joints made, whichever is greater, under that procedure that are found unacceptable by testing under §192.513. (emphasis added)

The Commission Staff ("Staff") has thoroughly investigated Aquila's request and concludes for the reasons indicated in the Memorandum of Leo M. Haynos, Chief of Pipeline Safety, dated April 11, 2002, that the changes proposed by Aquila in paragraphs 2 and 3 above are fully consistent with pipeline safety requirements, and under certain conditions, they are more stringent than current regulation. Staff recommends approval of Aquila's request for waiver and modification of the requirements of 49 C.F.R. §192.285(a)(2) and §192.285(c), as adopted by K.A.R. 82-11-4, as follows:

"(a) No person may make a plastic pipe joint unless that person has been qualified under the applicable joining procedure by:

(1) Appropriate training or experience in the use of the procedure; and

(2) Except when re-qualifying for mechanical or electrofusion joints under §192.285(c)(1), making a specimen joint from pipe sections joined according to the procedure that passes the inspection and test set forth in paragraph (b) of this section.

(c) A person must be requalified under an applicable procedure at the following frequencies:

(1) Once each calendar year, but at intervals not to exceed 15 months; or

(2) Whenever that person has 1 joint made under that procedure that is found unacceptable by testing under §192.513."

Staff recommends approval of Aquila's request to waive the requirements of 49 C.F.R. §192.285(a)(2) and §192.285(c) in accordance with modification of the procedures for re-qualification as set forth above. Staff further notes that Aquila's requested waiver will also require approval of the U.S. Department of Transportation under 49 U.S.C.A. 1671, *et seq.*, as amended, now 49 U.S.C. 60101, *et seq.*

5. Granting the requested waiver and modification will not compromise pipeline safety and offers efficiency in personnel testing and re-qualification, as well as cost benefits by *minimizing the number* of non-reusable plastic mechanical joints destroyed in the training process.

II. AUTHORITY

6. K.S.A. 66-1,150 authorizes the Commission to adopt such rules and regulations as may be necessary to be in conformance with the Natural Gas Pipeline Safety Act of 1968, 49 U.S.C.A. 1671, *et seq.*, as amended, now 49 U.S.C. 60101, *et seq.*

7. This application seeks a waiver of the requirements of 49 C.F.R. §192.285(a)(2) and §192.285(c), as adopted by K.A.R. 82-11-4.

8. K.A.R. 82-11-9(b) provides that the Commission may grant waivers of compliance with gas pipeline safety regulations in K.A.R. 82-11-1, *et seq.*, after notice and opportunity for hearing, if the Commission determines that the waiver is consistent with pipeline safety. Staff has recommended that a waiver be granted as being consistent with pipeline safety.

9. Pursuant to K.A.R. 82-I-202(a), the Commission has the power to waive any of its

regulations, and can waive the requirement of notice and opportunity for hearing if the Commission determines that a waiver of the requirement contained in K.A.R. 82-11-9(b) is in the public interest.

10. Staff has reviewed the proposal and the applicable regulations, believes the proposed waiver is consistent with public safety, and recommends approval of the application, subject to adoption of Staff's recommendations.

III. FINDINGS

The Commission finds as follows:

a. Findings of Fact:

(1) The Commission, pursuant to K.S.A. 66-1,150, is authorized to adopt such rules and regulations as may be necessary to be in conformance with the Natural Gas Pipeline Safety Act of 1968, 49 U.S.C.A. 1671, *et seq.*, as amended, now 49 U.S.C. 60101 *et seq.*

(2) Applicant is a certificated public utility authorized to transact the business of a natural gas public utility within the State of Kansas.

(3) The Commission has the authority to grant the waiver requested by Aquila under K.A.R. 82-11-9(b).

(4) The Commission has the authority, under K.A.R. 82-1-202(a), to waive requirements of its regulations, including the requirement for notice and opportunity for hearing under K.A.R. 82-11-9(b), and the Commission finds that it is in the public interest to do so in this matter.

(5) The Applicant's request for a waiver of the requirements of 49 C.F.R. §192.285(a)(2) and §192.285(c) and modification of the personnel re-qualification procedures is consistent with pipeline safety.

b. Conclusions of Law:

(1) The Commission concludes that it has the authority under applicable statutes and

regulations referenced above to grant the requested waiver and modification.

(2) The Commission finds that the waiver and modification requested is in the public interest, is consistent with pipeline safety and should be granted.

IT IS THEREFORE BY THE COMMISSION ORDERED THAT:

(A) The application for waiver is granted, subject to the following conditions:

- The requirements of 49 C.F.R. § 192.285(a)(2) and § 192.285(c) are hereby waived and modified in accordance with the revisions recommended by Staff in paragraph 4 above.
- Approval of Applicant's waiver by the U.S. Department of Transportation under 49 U.S.C.A. 1671, *et seq.*, as amended, now 49 U.S.C. 60101, *et seq.*

(B) The parties have fifteen (15) days from the date of this order, plus an additional three (3) days if service of this order is by mail, to file a petition for reconsideration of this order.

(C) The Commission retains jurisdiction of the subject matter and the parties for the purpose of entering such further order or orders as it may deem necessary and proper.

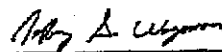
BY THE COMMISSION IT IS SO ORDERED.

Wine, Chr.; Claus, Com.; Moline, Com

Dated: APR 26 2002

ORDER MAILED

APR 26 2002

 Executive Director
Jeffrey S. Wagaman
Executive Director

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THE STATE CORPORATION COMMISSION
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In the Matter of the Application of Aquila, Inc.,)
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